

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSHUA COPENHAVER NELSON,

Plaintiff,

v.

WANZA JACKSON, et al.,

Defendants.

Case No. 2:12-cv-1167

Judge Graham

Magistrate Judge King

**ORDER AND
REPORT AND RECOMMENDATION**

Defendants were granted forty-five days after service of process to respond to the *Complaint*. *Initial Screen of the Complaint*, Doc. No. 6. Service of process was executed on January 7, 2013. *Summons Returned Executed*, Doc. No. 11. Defendants' response was therefore due no later than February 21, 2013. On February 20, 2013, defendants filed a motion to dismiss, Doc. No. 22.¹ On February 5, 2013, plaintiff moved for entry of default. Doc. No. 14; plaintiff also moved to strike the memorandum in opposition to that motion, Doc. No. 18.

Defendants' motion to dismiss was timely filed and defendants are not in default for response to the *Complaint*. Plaintiff's motion for entry of default is therefore without merit. Similarly, plaintiff's motion to strike the memorandum in opposition to the motion for entry of default, which is based on the erroneous proposition that defense counsel's notice of appearance, Doc. No. 10, was ineffective, is without merit. In any event, because plaintiff's motion for entry of default is wholly without merit, his motion to strike is moot.

It is therefore **RECOMMENDED** that plaintiff's motion for entry of default, Doc. No. 14, be denied.

Plaintiff's motion to strike, Doc. No. 18, is **DENIED**. With the filing of plaintiff's *Amended Complaint*, Doc. No. 32, the motion to dismiss the original *Complaint*, Doc. No. 22, and the amended motion to dismiss the original *Complaint*, Doc. No. 23, are now moot. The

¹ Defendants filed an amended motion to dismiss on February 21, 2013. Doc. No. 23.

Clerk is **DIRECTED** to remove the motions reflected at Doc. Nos. 22, 23 from the Court's pending motions list.

Defendants' motion for an extension of time to respond to the *Amended Complaint*, Doc. No. 33, is **GRANTED**. Defendants may have until April 1, 2013 to respond to the *Amended Complaint*.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/ Norah McCann King
Norah McCann King
United States Magistrate Judge

March 19, 2013